IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CIVIL REVISION APPLICATION NO.172 OF 1997

Shri Ramnath Magdum Yadav
an adult, Mahakali,
Andheri (East),Bombay 400 93. Petitioner

Vs.

Shri Shivshankar Mahadeo Shukla,
an adult, Mahakali,
Mulgaon Village, Jogeshwari (East),
Bombay 400 093. Respondent

Mr.B.K.Raje for petitioner.

Mr.Indu Prakash h/f. Mr.L.K.Tripathi and Mr.R.P.Ohja
for respondent.

CORAM: B.H.MARLAPALLE,J.
July 20, 2005.

ORAL JUDGMENT:

1. This civil revision application assails the decree passed by the learned City Civil Judge at Mumbai in S.C.Suit No.6048 of 1979 on 24-4-1996 under Section 6 of the Specific Reliefs Act, 1963. The suit property was tenanted premises admeasuring 35' x 25', a part of the bigger premises located on Survey No.51, Hissa No.11, Mahakali, Mulgaon village, Jogeshwari (East), Mumbai and assessed as K-3925(5C). As per the plaintiff the suit premises were used by him as a stable from 1963 on rental basis from its owner Mr.B.Nunes and it was in his possession

continuously till 4-4-1979 on which date he was dispossessed illegally and fraudulently by misusing the order passed by the Executive Magistrate under Section 145 of Cr.P.C. in proceeding No.168 of 1975.

2. The plaintiff had initiated proceeding No.168 of 1975 alleging that he was wrongly dispossessed and by order dated 16/5/1977 passed by the Executive Magistrate the plaintiff was directed to be put in possession of the suit property. The said order was challenged by the defendant in Criminal Revision Application No.250 of 1977 which was rejected summarily on 15/6/1977. Thereafter the defendant filed S.C.Suit No.4291 of 1977 and another Civil Suit No.664 of 1978 for a declaration that the order of restoration passed on 16-5-1977 was illegal. The first suit was withdrawn by the defendant and in a notice of motion taken out in the second suit the statement regarding no objection was recorded and accordingly the notice of motion was disposed off. On 23-3-1979 the defendant Ramnath Yadav submitted an application before the Executive Magistrate alleging that he was wrongly dispossessed of his property bearing No.K-3925(II) while executing the order dated 16-5-1977 passed in favour of the plaintiff. Without

notice to the plaintiff the Executive Magistrate passed an order on the said application on 19-4-1979 and directed the Inspector of Jogeshwari Police Station to restore the municipal property No.K-3925(II) to the defendant. In the process of executing this order the plaintiff was dispossessed of the suit property and, therefore, he filed Short Cause Suit No.6048 of 1979 which resulted into the impugned decree.

3. The trial Court held that the plaintiff was in possession of the suit property as a tenant of one B.Nunes and on the said plot he had constructed a stable bearing Municipal Assessment No.K-3925(5-C) and he was in possession of the same till he was forcibly dispossessed on 4-4-1979. The trial Court further held that the defendant had come in possession of the suit property illegally and, therefore, the plaintiff was entitled to get back the possession of the suit property.

4. The learned counsel for the applicant - defendant challenged the decree on two main grounds viz. (a) the suit structure was Municipal Assessment No.K-3925(5-C) whereas the defendant was put in

possession of the structure with Municipal Assessment No.K-3925(II) and thus there was no question of the plaintiff being put in possession of the property belonging to the defendant and (b) in any case the defendant was put in possession of the property bearing Municipal Assessment No.K-3925(II) pursuant to the order passed by the Executive Magistrate on 19-4-1979 and, therefore, he was not put in possession illegally.

5. The trial Court on assessment of the evidence adduced by both the parties and by taking into consideration the orders passed by the Executive Magistrate on 16-5-1977, 19-4-1979 and the panchanama dated 28-12-1978 recorded a finding that the suit property and the property put in possession of the defendant pursuant to the order passed by the Executive Magistrate on 19-4-1979 was one and the same and that the said order was obtained by misrepresentation by the present applicant. As per the learned counsel for the applicant the said observations are not supported by any evidence. These submissions are fallacious and if regards be had to the application dated 23-3-1979 submitted by the applicant himself before the Executive Magistrate

in Case No.168 of 1975 it would be more than clear that he had played a fraud and obtained the order dated 19-4-1979 fraudulently. In the said application he stated, inter alia, that in execution of the order dated 16-5-1977 passed by the Executive Magistrate, the possession of property bearing Municipal Assessment No.K-3925(II) was handed over to the plaintiff by the Inspector of Jogeshwari police station and the structure bearing Municipal Assessment No.K-3925(5-C) did not exist at all at the relevant time. He thus misrepresented that Municipal Property No.K-3925(5-C) did not exist and while executing the order passed by the Executive Magistrate on 16-5-1977, the property bearing Municipal Assessment No.K-3925(II) belonging to the defendant was handed over to the plaintiff. This was a mischief played by the defendant and without verifying the correct numbers of the property handed over to the plaintiff on 28-12-1978, the Executive Magistrate passed an order and that too ex-parte so far as the plaintiff is concerned. The trial Court rightly assessed the evidence and came to the conclusion that the suit structure was the same as was put in possession of the defendant consequent to the order passed on his application dated 23-3-1979.

The reasoning set out for granting the decree under Section 6 of the Specific Reliefs Act is based on the correct assessment of the evidence adduced before the trial Court and, therefore, it does not suffer from any infirmities.

6. In the premises, this revision application fails and the same is hereby dismissed. Rule discharged but with costs. Interim order, if any, stands vacated.

(B.H.MARLAPALLE,J.)